

**Corporate Governance
Regulation: Assessing the
Effectiveness of Soft Law in
relation to the Contemporary
Role of the Board of Directors**

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**A Thesis Submitted for the Degree of Doctor of
Philosophy**

Faculty of Law

**University of Technology, Sydney
2014**

Certificate of Original Authorship

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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Acknowledgements

Thank you to my supervisors, Professor Paul Redmond and Professor Thomas Clarke for their remarkable patience and support during the many months that this thesis lingered mostly in my mind rather than on paper. You have not only served as supervisors but as mentors, role models and confirmation that academia can provide the freedom and opportunity to subtly make a difference.

Thank you to my twins Zoe and Harris who were born and lived their first six years during the creation of this thesis. They have overcome so many hurdles and bring joy and inspiration to every day.

My husband Mark also deserves an enormous thank you for supporting this endeavour, giving up his pottery classes, getting up extremely early and taking on Tuesday dinner and bedtime so that I could work late.

Thank you colleagues Marie and Martijn for your pep talks from the corner desk.

Lastly, thank you to my parents for offering to proof read and more importantly for providing the love, support and opportunity that got me to this stage.

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Abstract

The objective of this thesis is to explore, using empirical evidence, the effect of recent corporate governance reforms in Australia. The Australian Securities Exchange (ASX) implemented a code of corporate governance in 2003 which has been regularly revised. The thesis focuses on this semi-voluntary code of corporate governance, exploring how it has resulted in changes in corporate behaviour and its effectiveness at improving board performance. By interviewing directors and other company officers, as well as reviewing published evidence of companies' corporate governance systems, the thesis builds theory regarding corporate governance and its regulation founded closely upon empirical data.

The thesis finds that the contemporary role of the board is complex: collaboration with management may be more important to effective board function than monitoring. Open dialogue between board and management is the key to an effective board, a process that enables it to fulfil its multiple roles. The role of the board can change over time and is dependent on company circumstances. Directors, in fulfilling their legal duty to act in the best interests of the company balance the interests of different stakeholders. This involves incorporating these interests into operational strategies to improve long-term sustainability.

Using specific recommendations of the Australian corporate governance code as regulatory case studies, the thesis finds that the flexibility of the ASX corporate governance code is vital in permitting companies to create tailored solutions to their governance needs. The provisions of the code that require regular review of corporate governance and setting of targets are some of the most effective because they keep corporate governance structures and processes alive and relevant. Corporate governance codes appear to influence behaviour through the internalisation of processes rather than through external pressure based directly on corporate disclosures. Indeed, understanding the interplay between soft regulation and its institutional environment is essential to effective policy making. Voluntary regulation relies on tapping into this institutional environment to provide incentives for desired behaviour. In doing so it builds on and enforces emerging norms of behaviour and entrenches them into corporate culture through a slow process of change management.